

# **LEGAL ACTION FOR THE RIGHT TO FOOD:**

## **Supreme Court Orders and Related Documents**

**[PUCL vs Union of India & others, Writ Petition (Civil) 196 of 2001]**

**January 2004**

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\* This booklet has been prepared by the support group of the "right to food campaign" for circulation at the World Social Forum (Mumbai, January 2004). It presents an initial collection of recent writings on this issue, for information and debate. The views expressed are those of the individual authors.

For further information on the right to food campaign, see the campaign website ([www.righttofood.com](http://www.righttofood.com)) or send a line to [right2food@yahoo.co.in](mailto:right2food@yahoo.co.in).



# Introduction

Perhaps you have heard of the public interest litigation (PIL) on the right to food launched in April 2001 by the People's Union for Civil Liberties, Rajasthan.<sup>1</sup> This litigation is far from over, but it has already led to significant "interim orders". These orders can be used with good effect to strengthen various aspects of the right to food.

This booklet contains the Supreme Court orders (up to January 2004) and related documents. It was prepared by the "support group" of the right to food campaign. For further information about the PIL and the campaign, see the campaign website ([www.righttofood.com](http://www.righttofood.com)) or you could send a line to [right2food@yahoo.co.in](mailto:right2food@yahoo.co.in).

You can also contact the legal team (Aparna Bhat and Colin Gonsalvez) at the Human Rights Law Network, 65 Masjid Road, Jangpura Extension, New Delhi 110 014 (tel 011-2431 985/6/7, e-mail [slicdelhi@vsnl.net](mailto:slicdelhi@vsnl.net)).

You may also be interested in the website maintained by the office of the Commissioners of the Supreme Court, to be launched shortly.

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<sup>1</sup> This PIL is known as "PUCL vs Union of India and Others, Writ Petition (Civil) 196 of 2001". It began in April 2001 with a writ petition submitted to the Supreme Court by PUCL, Rajasthan.



# Summary of the PUCL Petition

The prevalence of “hunger amidst plenty” in India took a new turn in mid-2001, as the country’s food stocks reached unprecedented levels while hunger intensified in drought-affected areas and elsewhere. This situation prompted the People’s Union for Civil Liberties (Rajasthan) to approach the Supreme Court with a writ petition on the “right to food”. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all states and union territories as respondents.

The legal basis of the petition is simple. Article 21 of the Constitution is a guarantee of the “right to life”, and imposes upon the state the duty to protect it. This right is fundamental. The Supreme Court has held in previous cases that the right to life includes the right to live with dignity and all that goes along with it, including the right to food. The petition argues, in essence, that the response to the drought situation by central and state governments constitutes a clear violation of this right. The bulk of the petition focuses on Rajasthan.

The petition points out two aspects of the state’s negligence in providing food security. The first is the breakdown of the public distribution system (PDS). The failures of the PDS arise at various levels: its availability has been restricted to families living below the poverty line (BPL), yet the monthly quota per family cannot meet the nutritional standards set by the



Indian Council of Medical Research (ICMR). Even this is implemented erratically: a survey in Rajasthan indicated that only one third of the sample villages had regular distribution in the preceding three months, with no distribution at all in one sixth of them. The identification of BPL households is also highly unreliable. All in all, the assistance provided to BPL households through the PDS amounted to less than five rupees per person per month.

The other focus of the petition is the inadequacy of government relief works. Famine Codes operational in various states govern the provision of these works, and make them mandatory when drought is declared. Despite being required to give work to "every person who comes for work on a relief work", the Rajasthan government has followed a policy of "labour ceilings", which then restricted employment to less than 5 per cent of the drought affected population, by the government's own statistics. Actual employment has been even lower, and failure to pay the legal minimum wage has been reported at many places.

The petition demolishes one official excuse for both these problems, namely the lack of funds. The Supreme Court has already held that shortage of funds cannot excuse the failure to fulfil constitutional obligations. In any case, that excuse is singularly inapplicable, given the availability of gigantic food stocks. The state government has repeatedly requested free grain for relief works from the central government, with little success. However, its failure to utilise the quantities already allotted to it undermines its own case.



The petition concludes with a request to the Supreme Court to intervene. Specifically, the petition asks the court to order the Government of Rajasthan to (a) provide immediate open-ended employment in drought-affected villages, (b) provide 'gratuitous relief' to persons unable to work, (c) raise the PDS entitlement per family and (d) provide subsidised foodgrain to all families. Finally, the petition requests the court to order the central government to supply free foodgrain for these programmes.



# Supreme Court Orders\*

## 1. Text of the Order of 23<sup>rd</sup> July, 2001

Counsel for the petitioner is permitted to file a fresh application for interim relief. A copy of the same be given to the counsel for the Union of India as well as to the counsel for the States and for the Food Corporation of India. Learned Attorney General states that this should not be regarded as an adversarial litigation and it is a matter of concern for all. In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems. Reply affidavits be filed within two weeks by the States and the Union of India as well as the Food Corporation of India.

In the meantime, we are sure that the responsible Governments will act for the benefit of their people. By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made. Leave is granted to the petitioner to implead other States also as parties to this petition. On such an application being filed today, notice to issue to them. List the matter for further consideration on 20<sup>th</sup> August, 2001.

(D.P. WALIA)  
Court Master

(S.L.GOYAL)  
Court Master

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\* The orders given here contain the original text of the interim orders issued by the Supreme Court, except details regarding the quorum.



## 2. Text of the Order of 17<sup>th</sup> September, 2001

With reference to this Court's direction dated 3<sup>rd</sup> September, 2001 requiring 16 States & Union Territories who, according to the learned Attorney General, had not identified the below poverty line families under the Antyodaya Anna Yojana, to identify, we are not satisfied that any such exercise in the right earnestness has been undertaken. Some of the States mention that the exercise is underway. Considering the seriousness of the matter, one further opportunity is granted to these 16 States and Union Territories to comply with the Central Government's directions within three weeks and to inform the Central Government about the number of below poverty line families under the Antyodaya Anna Yojana which they have identified. Copies of the communication said by the said 16 States/Union Territories should also be forwarded to the Attorney General who will inform the Court on the next date of hearing whether compliance has been made or not.

In I.A. No. 8/2001 at pages 66-68, certain schemes of the Central Government are mentioned which are required to be implemented by the State Governments. These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, and National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families. The Chief Secretaries of all the States & the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same.

The Central Government shall collate all the facts and thereafter take necessary action in order to ensure the implementation of the said Schemes. A Status Report with regard thereto may be filed in Court within five weeks. Before giving the Status Report, the Central Government will also ascertain with regard to the actual implementation of the various Schemes. In the meantime, we direct all the State Governments to forthwith lift the entire allotment of foodgrains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes.



The Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible. To come up on 5th November, 2001.

(D.P. WALIA)  
Court Master

(S.L. GOYAL)  
Court Master

### **3. Text of the Order of 28<sup>th</sup> November, 2001**

After hearing learned counsel for the parties, we issue, as an interim measure, the following directions:

#### **1. TARGETED PUBLIC DISTRIBUTION SCHEME (TPDS)**

- (i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to the TPDS. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- (ii) The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002.
- (iii) The Delhi Govt. will ensure that TPDS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

#### **2. ANTYODAYA ANNA YOJANA**

- (i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.



(ii) We direct the States and the Union Territories to complete identification of beneficiaries, issuing of cards and distribution of grain under this Scheme latest by 1st January, 2002.

(iii) It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the States and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

### **3. MID DAY MEAL SCHEME (MDMS)**

(i) It is the case of the Union of India that there has been full compliance with regard to the Mid Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) We direct the State Governments/ Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State ( in order of poverty ) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State.

(iii) We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time. The States/ Union Territories and the FCI are directed to do joint inspection of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.

### **4. NATIONAL OLD AGE PENSION SCHEME (NOAPS)**

(i) It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.



(iii) We direct the State Govts. / Union Territories to make payments promptly by the 7th of each month.

## **5. ANNAPURNA SCHEME**

The States/ Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.

## **6. INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS)**

(i) We direct the State Govts. / Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

- (a) Each child up to 6 years of age to get 300 calories and 8-10 gms of protein;
- (b) Each adolescent girl to get 500 calories and 20-25 grams of protein;
- (c) Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein;
- (d) Each malnourished child to get 600 calories and 16-20 grams of protein;
- (e) Have a disbursement centre in every settlement.

(ii) It is the case of the Union of India that there has been full compliance of its obligations, if any, under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

## **7. NATIONAL MATERNITY BENEFIT SCHEME (NMBS)**

(i) We direct the State Govts. / Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women Rs. 500/- through the Sarpanch 8-12 weeks prior to delivery for each of the first two births.

(ii) It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.



## **8. NATIONAL FAMILY BENEFIT SCHEME**

(i) We direct the State Govts. / Union Territories to implement the National Family Benefit Scheme and pay a BPL family Rs. 10,000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies.

9. We direct that a copy of this order be translated in regional languages and in English by the respective States/ Union Territories and prominently displayed in all Gram Panchayats, Govt. School Buildings and Fair Price Shops.

10. In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Schemes and the list of beneficiaries shall be made available by the Gram Panchayats to members of public for inspection.

11. We direct Doordarshan and AIR to adequately publicise various Schemes and this order. We direct the Chief Secretaries of each of the States and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and counsel for the petitioner.

We grant liberty to the Union of India to file affidavit pursuant to the order of this Court dated 21st November, 2001. List the matter for further orders on 11<sup>th</sup> February, 2002. In the meanwhile, liberty is granted to the parties to apply for further directions, if any.

(B. N. KIRPAL)

(K. G. BALAKRISHNAN)

New Delhi, November 28, 2001



## 4. Text of the Order of 8<sup>th</sup> May, 2002

After hearing learned counsel for the parties we issue the following directions:

(a) The Gram Panchayats shall frame employment generation proposals in accordance with the Sampoorna Gramin Rozgar Yojana (SGRY) guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment such as water and soil conservation, afforestation and agro-horticulture, salvipasture, minor irrigation and link roads, These proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously.

(b) The respondents shall focus the SGRY programme towards agricultural wage earners, non agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.

(c) The respondents shall make the wage payment on a weekly basis.

(d) The respondents shall prohibit the use of contractors in the SGRY programme.

(e) The Central Government shall make financial releases under the different employment generation schemes to each State on schedule, provided that the State Governments fulfil the conditions as prescribed by the SGRY. The State Governments are directed to fulfil these conditions and implement the SGRY expeditiously. The State Government will furnish utilisation certificate and it is only on the furnishing of the same that further amounts shall be released. The funds provided shall only be utilised in respect of SGRY programme.

(f) The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances to misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law.

(g) On a complaint being made to the Chief Executive Officer of the Zilla Panchayat (CEO)/Collector regarding non-compliance of the orders of this Court the Concerned CEO/Collector shall record the salient features of the



complaint in a register maintained for this purpose, acknowledge receipt of the complaint and forthwith secure compliance with this Court's order.

(h) The CEO/Collector of all the Districts in the States and territories shall scrutinize the action taken by all the implementing agencies within their jurisdiction to ensure compliance with this court's orders and report to the Chief Secretary.

(i) The responsibility for implementation of the order of this Court shall be that of the CEO/Collector. The Chief Secretary will ensure compliance with the order of this Court.

(j) Dr. N.C. Saxena, former Planning Secretary, Government of India, and Mr.S.R. Shankaran, former Secretary, Rural Development, Government of India, shall function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the above-mentioned grievance resolution procedure has been exhausted.

(k) On the Commissioner's recommending a course of action to ensure compliance with this Court's order, the State Government/UT administrations, shall forthwith act upon such recommendation and report compliance.

(l) The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court.

(m) The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, section of beneficiaries and the disbursement of benefits. The Gram Sabhas can raise their grievance (s) in the manner set out above and the redressal of the grievance (s) shall be done accordingly.

(n) It has been stated by the Petitioner that the identification of BPL families is not being done properly and that the criteria for the identification of the BPL families are neither clear nor uniform. The Central and the State Governments are directed to frame clear guidelines for proper identification of BPL families.



(o) The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.

To come up for further directions after 12 weeks.

Sd/- CJI

ARIJIT PASAYAT J.

H.K. Sema J.

## 5. Text of the Order of 29<sup>th</sup> October, 2002

On 8<sup>th</sup> May, 2002, detailed directions were given by this Court with regard to the implementation of various schemes which had been floated for giving relief to the poor, impoverished and the hungry. In the said order Dr. N.C. Saxena and Mr. S.R. Sankaran were appointed as Commissioners of the Court, inter alia, for the purpose of looking into any grievance that may persist after the grievance resolution procedure set out in the said order has been exhausted.

Pursuant to the said order Dr. N.C. Saxena has filed the first Report dated 12<sup>th</sup> October, 2002. In the said Report, there is a reference with regard to the food requirement in the State of Rajasthan. We heed not go into this aspect but what requires to be considered is the directions which are sought for by the Commissioners in the said Report.

We have heard the learned Attorney General, Mr. Colin Gonsalves and Dr. A.M. Singhvi and in furtherance and in addition to our aforesaid order of 8th May, 2002; we issue the following directions.

The Chief Secretaries/Administrators of the States/Union Territories are directed to respond promptly to the correspondences addressed to them by the Commissioners and provide full information as required.

In case of persistent default in compliance with the orders of this Court concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible.

The Chief Secretaries/Administrators are given one last chance to translate and permanently display the order dated 28th November, 2001 and 8th May, 2002 of this Court, on all the Gram Panchayats, school buildings and fair price shops and give wide publicity on the All India Radio and Doordarshan. This should be complied with within eight weeks from today.



It is clarified that the scope of the work of the Commissioners appointed by this Court is to include the monitoring of the implementation of this Court's orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes.

The respective State Governments shall appoint Government officials as Assistants to the Commissioners within eight weeks from today. The appointment shall be made by the Chief Secretaries/Administrators of the States/Union Territories in consultation with Dr. N.C. Saxena. The Assistants so appointed will render such assistance to the Commissioners as the Commissioners may require and help them in discharging the responsibility which has been cast upon them.

In order to ensure that there is effective implementation of the Governmental Schemes, the States as well as the Central Government shall appoint one Nodal Officer each. The Assistants appointed to help the Commissioners, as well as the Commissioners would remain in constant touch with the said Nodal Officers for the purpose of ensuring the due implementation of the Schemes.

The Nodal Officers so appointed shall provide to the Commissioners full access to relevant records and provide relevant information.

Whenever the States/Union Territories have a meeting in relation to food scarcity it will be appropriate that the Commissioners and in their absence the assistants are notified to participate in the same.

It is the duty of each States/Union Territories to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries/Administrators of the States/Union Territories may be held responsible for the same.

We reaffirm our earlier order dated 8<sup>th</sup> May, 2002 and direct the parties to comply with the same, and, in particular the Central Government shall formulated the scheme to extend the benefits of the Antyodhaya Anna Yojana to the destitute section of the population.

Adequate funds shall be made available to the Commissioners by the Union of India to enable them to perform the functions. To await the next Report of the Commissioners, and to come up for further orders after four



months before a Bench of which Hon'ble Mr. Justice Y.K. Sabharwal is a Member.

Kalyani (S.L. GOYAL)

Court Master

## 6. Text of the Order of 2 May, 2003

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals day. Their misfortune becomes further grave during the times of famines and drought. The petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus food-grains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of food-grains. In order that any meaningful and immediate relief is given by the Central Government and the State Government without any delay various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon'ble Court on 3<sup>rd</sup> March, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to the 8<sup>th</sup> April, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AAY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on 3<sup>rd</sup> March, 2003 that for the budget for the year 2003-2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on 8<sup>th</sup> April, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor other aspects required to be dealt with in the last order have been adverted to. In I.A.25 one of the grievance that



has been made is that names of various persons have been removed from BPL arbitrarily. In I.A.26 it has been highlighted that the allocation made for supply of grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I.A.26 including in the matter of reduction of supply of the grain and the number of days. In I.A.26 directions sought against Union of India are to release 20 million tones food-grains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor General for Union of India, besides Mr. B.B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U.P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existing leading to malnutrition, starvation and other related problems. The anxiety of the Court is to see that poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government-whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those



families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve is the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/ Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of the Famine Code. Learned Additional Solicitor General submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Grain Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code.

The next aspect pertains to Food-for-Work. We have been taken through Employment Assurance Scheme of the Government of India. Though the same stands merged into SGRY, but it has been submitted by learned counsel for the petitioner that the reliefs under SGRY, instead of improvement, have since been reduced. SGRY provides for an outlay of only Rs.5000 crores and 5 million tones of free grain. It was pointed out that as far as the guarantee of employment is concerned, in the Employment Assurance Scheme, it was 100 days, whereas according to



SGRY, it is 15 days and rather 10 days according to States and at the most 20 days which is according to Union of India. Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy-July, 2002. A detailed reference to report has been made in I.A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report inter alia states that an importantly social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in long run, employment generation should be distinct from the food delivery system. This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks, the Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food for Work programme, a revitalized universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and at least doubled. It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the Government of India. It gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available.

While directing the Government of India to place on record by 8<sup>th</sup> August, 2003, the consideration bestowed on the Report of the Committee and the decision, if any, we direct that on pro rata basis, the



recommendation that present SGRY scheme should be expanded at least doubled be implemented, both in regard to allocation of food-grain as also cash, for the months of May, June and July. The State Government shall lift those allocations and ensure that the same reach those for whom it is meant. In case, however, after considering the response of Union of India, we hold that the allocations do not deserve to be doubled as recommended, the question of adjustment being made for the future supplies on the basis of the allocations in terms of SGRY can be considered.

Further, it is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of food-grains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions:

- (1) Licensees, who
  - (a) do not keep their shops open throughout the month during the stipulated period,
  - (b) fail to provide grain to BPL families strictly at BPL rates and no higher,
  - (c) keep the cards of BPL households with them,
  - (d) make false entries in the BPL cards,
  - (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations,



shall make themselves liable for cancellation of their licenses. The concerned authorities/functionaries would not show any laxity on the subject.

- (2) Permit the BPL household to buy the ration in instalments.
- (3) Wide publicity shall be given so as to make BPL families aware of their entitlement of food-grains.

What was observed in the order dated 23<sup>rd</sup> July, 2001 in regard to the making available of food to aged, infirm, disabled etc. has already been noticed hereinabove. According to the figures supplied by the petitioner, approximately 1.5 crore persons are eligible to get Antyodaya Anna Yozana (AAY) Card. We direct the Government of India to place on AAY category the following groups of persons :-

- (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women ;
- (2) widows and other single women with no regular support;
- (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- (4) households with a disabled adult and assured means of subsistence;
- (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
- (6) primitive tribes.

What we have stated above in regard to BPL Cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Regarding Mid Day Meal, on 28<sup>th</sup> November, 2001, this Court directed the State Government/Union Territories to implement the Mid Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of



protein each day of school for a minimum of 200 days. It was further directed that those Governments which provide dry rations instead of cooked meals, within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State. Some States in implementation of the said direction are supplying cooked mid day meal to the students. We are, however, told that despite the fact that 1½ years has passed, some of the States have not even made a beginning. Particular reference has been made to States of Bihar, Jharkhand and Uttar Pradesh. It is not in dispute that in these three State even beginning has not been made whereas some of the other States are fully implementing directions for supply of cooked Mid Day Meal. Counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation. No reply or affidavit was filed by the said State. In so far as the State of Bihar is concerned, Mr. B.B. Singh has drawn our attention to the affidavit filed by Secretary and Relief Commissioner, Relief and Rehabilitation Department, Government of Bihar, inter alia stating that the State Government proposes to implement this scheme in few blocks on a pilot basis through panchayat, pending settlement of the issue regarding funding of conversion cost and to establish the capacity of the panchayat raj institution to supply hygienic cooked meals to all eligible students on a regular basis, without compromising teaching activities. The affidavit could not be more vague than what it is. When they propose to start, in how many districts they propose to start, what scheme has been formulated and every other conceivable detail is missing from the affidavit. We are told that there are 38 districts in the State of Bihar. For the present, we direct the said State to implement the cooked Mid Day Meal Scheme in terms of the directions of this Court in at least 10 District, which may be most poor according to the State's perception.

We also direct the State of Uttar Pradesh, Jharkhand and other States to make a meaningful beginning of the cooked Mid Day Meal Scheme in at least 25% of the District, which may be most poor.

By order dated 8<sup>th</sup> May, 2002 Dr. N.C. Saxena, former Planning Secretary, Government of India and Mr. S.R. Shankaran, former Secretary, Rural Department, Government of India were appointed to function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has



been exhausted. In subsequent orders, directions have been issued to the Government to fully cooperate with the learned Commissioners. Mr. Shankaran has said to have written a letter to the Government expressing personal difficulty in functioning as Commissioner on account of ill-health. Mr. Gonsalves states that he has recovered and now is in a position to so function. We would, therefore, request Mr. Shankaran to start functioning as Commissioner with Dr. Saxena in terms of the orders already passed.

The copies of the order shall be sent to the Chief Secretaries of all States/Union Territories. The State Governments/Union Territories are directed to file affidavits showing the compliance and extent thereof. The affidavits may be filed on or before 8<sup>th</sup> August, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on 19<sup>th</sup> August, 2003.

(Y.K. SABHARWAL)

(H.K. SEMA)

## 7. Text of the Order of 5 May, 2003

The matter has been mentioned by Mr. Colin Gonsalves, learned counsel for the petitioner. He has also produced copy of the letter dated 3<sup>rd</sup> May, 2003 written to the learned Attorney General for India in addition to the orders passed on 2<sup>nd</sup> May, 2003. None is present for the Union of India. Having heard learned counsel for the petitioner, we direct that till the date of hearing the Government of India will not insist the State Governments to remove any person from the existing Below Poverty Line (BPL) list.

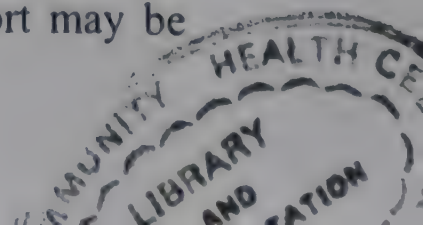
(P.D. Balodi)  
Court Master

(V.P. Tyagi)  
Court Master

## 8. Text of the Order of 2 December, 2003

A report dated 28th November, 2003 has been filed by the Committee. Such of the parties who have not been supplied with the said report may obtain it from the Registry. Response to the report may be filed within six weeks.

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Mr. Gonsalves, learned counsel, submits that though some aspects have been sorted out, some still remain on which directions may be issued by the Court. Let a compilation be filed stating the matters which have been sorted out and which remain to be resolved, within a period of six weeks.

List on a Friday in the month of January, 2004.

(N. Annapurna)

(V.P. Tyagi)



# Commissioners' Reports:

## Introduction

In April 2001, the People's Union for Civil Liberties (PUCL), Rajasthan, a human rights organization, submitted a writ petition to the Supreme Court seeking enforcement of the right to food. The petition argues that the right to food flows from the "Right to Life" enshrined in Article 21 of the Indian Constitution. In response to this petition, the Supreme Court has been directing the Union and State governments to take specific measures to address the crisis of food insecurity and hunger in India.

In an interim order dated 8 May 2002, the Supreme Court appointed Dr. N.C Saxena and Mr. S.R. Sankaran as Commissioners of the Court for the purpose of monitoring the implementation of the Court's orders and seeking redressal where appropriate. Further to this, in an order dated 29 October 2002, the Court clarified that *"the scope of the work of the Commissioners appointed by this Court is to include the monitoring of the implementation of this Court's orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes."* The Commissioners are also expected to submit reports to the Supreme Court to seek interventions beyond existing directions and on the larger issue of the right to food in India.

The Commissioners present periodic reports to the Supreme Court. These typically cover the status of implementation by states of directions given by the Court as well as the need for new directions.

This section presents summaries of the reports submitted so far by the Commissioners. For the full reports, see [www.righttofood.com](http://www.righttofood.com) ("Commissioners' Work" section).



# Summary of the First Commissioners' Report

[Note: This first report was submitted by Dr. N.C. Saxena, who was the single Commissioner at that time.]

The First Report of the Commissioner (Dr. N.C. Saxena), presented on 12 October 2002, focuses on the implementation of Supreme Court orders. The Report emphasizes that further steps need to be taken to make the Supreme Court orders effective. The Commissioner recommends employment, such as food-for-work programmes, as an important step towards food security and the elimination of hunger in India.

The Report presents a list of individuals and organizations nominated to assist the Commissioner in his work, as well as the role they are expected to perform. Clarifications related to the work of the Commissioner and assistants are provided.

A brief overview of some of the issues analysed in the First Report is presented below.

## REQUEST FOR INFORMATION

The Commissioner had sought information on compliance with the Supreme Court's orders and on the implementation of welfare schemes from all the states and union territories. The Commissioner expresses concern that many states have either not replied to these letters or given very general and formal replies, without providing much substantive information. In this context, the Commissioner requested the Court to direct the Chief Secretaries/Administrators of all the states/UTs to respond promptly and to provide full information to him.

## STARVATION DEATHS

The Commissioner is very concerned that despite the endeavours of the Supreme Court, hunger-related deaths have been taking place. Several cases from different parts of the country are presented. The Commissioner stresses that it should be clarified that it is the duty of each respondent



government to prevent such deaths. If starvation deaths are confirmed it will be assumed that the Court's orders have not been implemented. In such cases, the Chief Secretary/Administrator of the State/UT's will be held responsible.

### **OFFTAKE OF FOODGRAINS AND RELATED PROBLEMS**

A study shows that the increase in offtake of foodgrains for all the welfare schemes between 2000-2001 and 2001-2002 is just 6 million tonnes. This shows that something is holding back real progress. The offtake by many states is very low. The list of beneficiaries of various schemes was not being publicly displayed, as directed by the Supreme Court. The Commissioner also reports that foodgrains were not reaching fair price shops in time and that shopowners were distributing the grains only for three or four days a month.

### **FOOD FOR WORK**

In some states those working on the Food for Work programmes were not receiving their wages for months. This delay was caused by the non-availability of grain under Sampoorna Grameen Rozgar Yojana (SGRY). Such delays seriously hamper the government's efforts and cause avoidable hardships to the needy. It therefore emphasized the need for immediate allocation of foodgrains under the Food for Work programme. The Government of India must take the necessary steps to ensure timely payment of wages. Moreover, the Commissioner reiterates the petitioner's claim for 20 million tonnes of free grain to states specifically for use in Food for Work programmes.

### **MID-DAY MEALS**

The Commissioner stresses the importance of mid-day meals in primary schools. However, he notes with concern that several states have not yet complied with the Court's order on this. Such states were requested to clarify the reasons for this delay.

### **EXPORTS**

The issue of export of foodgrains by the government is also mentioned with concern. It is pointed out that it is regrettable that the government subsidizes the sale of foodgrains to foreign countries while hunger-related deaths were taking place in the country.



## **CHIEF SECRETARIES/ADMINISTRATORS RESPONSIBILITIES**

The Commissioners emphasize the importance of a cooperative role of States and Union Territories in the fight against hunger. While reiterating that the Commissioner should not be viewed as a fault-finder, in case of persistent failure to comply with the orders of the Court the Chief Secretaries/Administrators would be held responsible for contempt of Court.



# Summary of the Second Commissioners' Report

[Note: This second report was submitted by Dr. N.C. Saxena, who was the single Commissioner at that time.]

The Second Report of the Commissioner was presented to the Supreme Court in February 2003. In it, emphasis is given to mid-day meals and to Sampoorna Grameen Rozgar Yojana (SGRY), the largest employment programme in India at the time of the Report. Moreover, the status of the implementation of other Supreme Court orders was also covered in this Report. A brief summary of these issues and the corresponding recommendations by the Commissioner are presented below.

## **MID-DAY MEALS**

The Report highlights the importance of introducing nutritious mid-day meals in primary schools. These meals are very effective in protecting children against hunger. Many states have shown a positive response by starting the programme with full or partial coverage. However, in Bihar, Uttar Pradesh and Jharkhand the scheme has not been started at all. Considering the importance of this programme, the Commissioner requests the Court to provide several directions. It is recommended that such states should be held accountable for total violation of Supreme Court orders and be directed to implement the programme immediately. Moreover, states that have started the scheme in a token way must be directed to extend the programme to the entire state. The Commissioner also recommends that an expert team be set up to prepare a budget for mid-day meals. States should also be directed to make an adequate budgetary provision and prepare guidelines for full implementation within 2 months. Finally, the Report stresses that states should continue to provide mid-day meals in drought affected areas during the summer holidays, and the Government of India should also be directed to provide free grain for this.

## **SAMPOORNA GRAMEEN ROZGAR YOJANA (SGRY) AND RELIEF EMPLOYMENT**

Taking up the Sampoorna Grameen Rozgar Yojana (SGRY), the Commissioner shows great concern over its poor implementation in many states. Its poor performance is due to unutilised grain and a low utilisation



of available funds under the scheme. Frequently, funds are not released on time. Other problems at the ground level are also pointed out. These include widespread cases of corruption, the use of machines which directly undermines the effectiveness of the scheme, excessive delays in receiving payments, reports that the grain component of wages is not reaching labourers. The Court is requested to direct respondents to utilise the entire allocation of funds and foodgrain in a timely manner and to ensure that there is complete transparency in the use of funds. It is also recommended that the Union of India should release foodgrains and funds on time. An order should be passed that when faced with serious financial constraints the entire wage may be paid in kind (foodgrains) only if the labourers so desire.

### **ISSUE OF RATION CARDS AND TARGETED PUBLIC DISTRIBUTION SYSTEM (TPDS)**

The proper identification of those below the poverty line (BPL) is a prerequisite for the functioning of the TPDS. Despite directions from the Court on the need to identify and issue cards to the Below Poverty Line (BPL) population, some states have not complied with these directions. Another concern is the total lack of transparency in the identification process. In some states, people are unaware of their entitlements and corruption is widespread. In order to avoid unfair exclusion of poor people from government schemes, the identification of BPL population is essential and cards must be issued immediately. The Commissioner requests the Court to direct all state governments, particularly the Government of Delhi, to issue ration cards immediately and to register complaints regarding BPL cards. Officers in charge should be held accountable for the non-distribution of cards. Moreover, it is recommended that all BPL cardholders should be allowed to purchase the allotted quota in instalments. Further, they should be allowed to buy the quota (in part or in full) for previous months as well. Migrant workers should also be entitled to draw grain on their BPL cards notwithstanding the fact that they have migrated.

### **PENSION AND ANNAPURNA SCHEMES**

Pension schemes have been relatively successful programmes of central and state governments. These schemes reach the disabled, aged, destitute and widows, who are among the most vulnerable people in the country. Annapurna is a programme which provides 10 kgs of grain free of cost to those who are eligible for a pension, but are not receiving it. However,



despite being relatively successful, many deserving people are being left out of these schemes. The Commissioner therefore advises the Court to direct the Union of India, States and Union Territories to double the coverage of pension schemes and allocate resources accordingly. Moreover, it is also recommended that states should complete the identification of Annapurna beneficiaries within eight weeks of the date of the Report.

### **VERIFICATION OF REPORTS ON STARVATION DEATHS**

The Commissioner stresses that it is imperative that drought relief is carried out on a massive scale if mass hunger and starvation are to be avoided. An earlier order of the Supreme Court established that the Chief Secretary would be held responsible for any starvation deaths that occur in a state. In accordance with this order, the Commissioners felt that it is important to verify whether the government has done its duty by implementing welfare schemes to reduce the chances of starvation deaths.

### **ACCESS TO INFORMATION**

The Report raises issues related to the lack of information about welfare schemes and poor awareness among beneficiaries of their entitlements. Public awareness is crucial for the success of the welfare programmes. The Commissioner requests the Court to consider directing all the States to pass the Right to Information Act in consultation with civil society groups at the earliest. Vital information about the schemes should be displayed by the PRIs, especially by Gram Panchayats. Moreover, the Report also recommends that relevant records should be open to inspection. Members of the public should be able to obtain photocopies of documents related to development projects. The Commissioner also suggests that the Chief Secretary/Administrator of each State/Union Territory should review the schemes at least once a quarter and should send a quarterly monitoring report to the Commissioner.



# Summary of the Third Commissioners' Report

[Note: This third report was submitted by Dr. N.C. Saxena, who was the single Commissioner at that time.]

The Third Report of the Commissioner is presented with a sense of urgency. It reviews the two years since the Writ Petition (Civil) 196 of 2001 was submitted by the People's Union for Civil Liberties (Rajasthan). The Report emphasizes that there is still a catastrophic failure to protect the fundamental right to life enshrined in Article 21 of the Constitution and an overarching lack of State commitment to the prevention of hunger and starvation in India.

The intervention of the Court is viewed as being potentially effective. Some useful orders have been passed and some positive steps have been taken by the respondents.<sup>2</sup> Considering the massive problem of chronic hunger in the country, the Commissioners feel that these initiatives have only made a small impact. Gigantic food stocks contrast with the fact that India remains one of the most undernourished countries in the world. The Commissioner is deeply concerned that the elimination of chronic hunger does not get the priority it deserves in policy planning and budget allocations. The routine violation of Supreme Court orders by the respondent governments is a symptom of this lack of commitment.

The need for further directions from the Supreme Court and for stronger monitoring mechanisms to enforce the Court's orders is stressed. The implementation of these orders varies substantially between different states and in worst cases like Bihar and Uttar Pradesh, there has been virtually no response from the governments.

A number of urgent issues are covered in the Third Report. The Report reiterates that the Court should not lose sight of the fundamental pleas presented in the original petition, such as the plea for the adoption of an "employment guarantee act" and for permanent social security

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<sup>2</sup> Examples include the introduction of cooked mid-day meals in primary schools by many state governments; substantial increase of foodgrain offtake under the public distribution system and related schemes; considerable increase in the coverage of Antyodaya Anna Yojana, a programme of food-based social security for the destitute.



arrangements for destitute households. The surge in foodgrain exports is also a matter of grave concern. Urban destitution is also mentioned as a problem which remains largely unresolved and which requires creative initiatives.

Below is a brief overview of some of the main issues analysed in the Third Report and the Commissioner's recommendations to the Supreme Court.

### **THE EMPLOYMENT ISSUE**

It is pointed out that employment at a living wage is the best protection against hunger. The Report shows how central and state governments have demonstrated little commitment to rural employment in recent years. Employment generation under SGRY is extremely limited in the more deprived and hunger-ridden states. The Commissioner suggests that the Court direct all the States to utilise the funds available for SGRY. Moreover, arbitrary implementation of SGRY strengthens the case for considering an alternative approach based on the principle of "employment guarantee". The problem of labour being displaced in employment-oriented schemes by the use of excavators, trucks and tractors has been raised. Moreover, the Report stresses the need to revive and uphold the principle of open-ended employment (without "ceiling") in drought-affected areas.

### **MID-DAY MEALS**

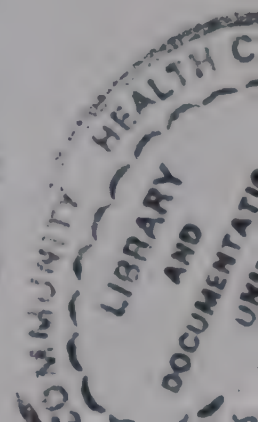
The mid-day meals programme has made some progress. It is a serious matter that several states (notably Bihar, Jharkhand and Uttar Pradesh) were yet to introduce mid-day meals at the time of the Report. The Court is urged to consider ways of holding these states accountable for this lapse and to request the state governments to submit affidavits explaining why mid-day meals are not being provided. Poor quality of meals being served in many of the complying States is also an important issue. Moreover, the Commissioner advises the Court to direct all state governments to continue providing mid-day meals during the summer vacations in drought-affected areas (and to consider doing the same in other areas as well) and to ensure that the basic facilities for the programme are provided.

### **TARGETED PUBLIC DISTRIBUTION SYSTEM**

Problems related to the Targeted Public Distribution System (TPDS) are also raised in this report. The Court is repeatedly directing governments to guarantee that households below the poverty line (BPL households)

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should obtain 35 kgs of grain per month at subsidized prices. However, many factors are preventing this scheme from working properly. The Commissioner shows that the public distribution system is in a dismal condition. It has ceased to mean much to the poor in large parts of the country. In this context, the Report urges for radical reform of this system, based on a deep examination of its prevailing failures. Furthermore, the Court is also called to constitute, without delay, an expert committee to deal with this issue and related matters.

### **BELOW POVERTY LINE (BPL) SURVEY**

The selection of Below Poverty Line (BPL) households is a complex issue. The BPL lists are unreliable. The Commissioner recommends that an expert committee be appointed to re-examine the methodology of the "BPL survey" and the larger question of targeting in the public distribution system. The Commissioners feel that in situations of drought and other calamities, relief should not be restricted to BPL households. Other households also tend to require support in such circumstances.

### **INTEGRATED CHILD DEVELOPMENT SCHEME**

The Report stresses that the provision of Integrated Child Development Scheme (ICDS) in every habitation, as directed by the Court, is not being properly observed and taken seriously. There seems to have been little action on this front. This scheme is essential to protect small children from undernutrition. Furthermore, ICDS should aim to give particular attention to children in the poorest families and to reach children aged under three.

### **SOCIAL SECURITY FOR DESTITUTE HOUSEHOLDS**

The Report suggests the need for putting in place comprehensive and durable social security arrangements to protect destitute households from hunger. The extension of the Antyodaya Anna Yojana (AAY) programme, despite not being an adequate step on its own for this purpose, is presented as a potentially important component of the required social security system and a welcome step in this direction.

### **OTHER SCHEMES**

As for the other schemes, such as the Annapurna, the National Old Age Pension Scheme (NOAPS), the National Family Benefit Scheme (NFBS), the National Maternity Benefit Scheme (NMBS) the Commissioner shows that there is not much to report. In most states, in spite of the intervention of the Court, there is little sign of improvement. Their implementation leaves much to be desired. Among the problems are poor coverage, under-



funding, reduced commitment by the government and lack of information about the schemes.

### **INFORMATION DISSEMINATION**

To conclude, the Report draws the attention of the Court to the crucial role of information and public awareness for the success of the initiatives in the fight against hunger. There is a need for more systematic efforts to spread information at all levels and make sure that people are aware of their entitlements under food-related schemes. There is also a need for better monitoring systems, stronger accountability, redressal and compensation mechanisms. Some suggestions towards this end are presented at the end of the Report.



# Summary of the Fourth Commissioners' Report

India is one of the most undernourished countries in the world, a sad reality recently confirmed in the *Human Development Report 2003*. And the Fourth Report of the Commissioners to the Supreme Court, dated 14 August 2003, places great emphasis on the fact that hunger amidst plenty is still a reality in India. The Report highlights that, in contrast with hunger and starvation that continues to haunt the country, the Food Corporation of India still holds 35 million tonnes of foodgrains, nearly 2 times more than the country requires to store in an average month, causing wastage of grains and absorbing enormous financial resources that could be used to assist poor people.

Although the Supreme Court's orders have led to substantial improvements in some aspects of the food system, the orders passed so far are not equal to the task of guaranteeing freedom from hunger and even these orders have been routinely violated. In this context, the Fourth Report stresses that, if the fundamental right to food is to become a reality, there is a need for bolder action.

A number of urgent issues related mainly with the implementation of earlier orders are covered in the Report. Below are some of those issues and the corresponding directions recommended by the Commissioners.

## MID-DAY MEALS

The Commissioners advise the Court to reaffirm the calling for mid-day meals programmes to be introduced in all primary schools. The Court is also urged to clarify that the earlier direction permitting resource-poor states to introduce mid-day meals initially in just one-fourth of the districts is only a temporary measure; States have to be categorically directed to implement mid-day meals in the entire state within six months. The Commissioners also stressed on the need to make qualitative improvements in the meal served and on the need to tackle the issue of caste discrimination in the selection of cooks for the programme.



## INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS)

Taking up the issue of ICDS or *Anganwadis*, the Report points out to the lack of attention given by most States to the plight of pre-school children from 6-months to 2 years with no satisfactory arrangement in feeding this extremely vulnerable group. The Commissioners stress that the order by the Court directing state governments to increase the coverage of ICDS has to be taken seriously. In this context, States should be directed to comply with the directions calling for an *Anganwadi* to be available in each habitation, and for the coverage of adolescent girls, pregnant and lactating women under this programme. Moreover, there is a need to direct states to ensure that all slums are within convenient reach of an *Anganwadi* and urban homeless children are also covered.

## ANTYODAYA ANNA YOJANA (AAY)

Some considerations were also raised in relation to Antyodaya Anna Yojana (AAY) programme. Some guidelines issued by the Government of India suggest that AAY cardholders should be selected from the Below Poverty Line (BPL) list, in spite of conclusive evidence that the BLP list is unreliable. In this sense, the Report advice the Court to determine that the possession of BPL cards should not be an eligibility criterion for inclusion in the AAY programme. The Commissioners defend that anyone who is deemed vulnerable to hunger should be entitled to a AAY card as a matter of right. Moreover, states should accelerate the issue of these cards.

## SOCIAL SECURITY PENSIONS

The Report reiterates the suggestion presented in the Third Report that the coverage of social security pensions should be doubled.

## URBAN DESTITUTION-

Bold measures are needed to properly tackle the neglected problem of urban destitution. In this context, the Commissioners advice the Court to direct state governments and union territories to: carry out annual surveys of urban destitute persons; make arrangements to effectively protect them from hunger; ensure that relief kitchens are available within walking distance in all urban areas; ensure that all Indian citizens are eligible for a ration card, including the homeless. The Report also recommends the Court to direct the Government of India to supply free grain to state governments for the functioning of relief kitchens and also to NGOs that are willing to provide cooked meals to the urban destitutes.



## **EMPLOYMENT**

In view of the fact that the enjoyment of the right to work is instrumental in securing the right to food, the Commissioners advise that some preliminary directions should be passed in this regard, such as the payment of minimum wages in employment programmes, the introduction of an employment guarantee scheme (Jaya Prakash Narayan Employment Guarantee Yojana) in at least 100 backward districts and the banning of the use of tractors and others labour-displacing machines on public employment programmes. The Court is also requested to direct the Government of India and the States to submit an affidavit outlining the steps taken to comply with the direction to double the creation of employment under the Sampoorna Grameen Rozgar Yojana (SGRY) scheme in May 2003 and direct states that are yet to comply with this order to do it by December 2003 at the latest. The Government of India should release the relevant resources (grain and cash) no later than four weeks from the order, to enable the states to plan and generate employment.

## **RESTRAINT ON EXPORTS**

The Commissioners raise a great concern to the fact that the energy shown by the Government of India in exporting food (one million tonnes of grains every month during the last 15 months) goes sharply in contrast with a continued passivity in dealing with endemic hunger at home. For this reason, the Commissioners advice the Court to direct the government to reconsider and restraint this policy of export of foodgrains, resorting to it only after fully and adequately meeting the food requirements of the people of the country.

## **TRANSPARENCY AND MONITORING**

The Report points out that the right to food and the right to information are interlinked and each is necessary to promote the other. The Commissioners stressed the danger of corruption in undermining the right to food, and called for promoting the right to information. The Report urges the Supreme Court to assert that all documents pertaining to food and employment schemes should be opened to public scrutiny and accessible for consultation by any individual at any time. These documents should be treated as public documents. The Commissioners also recommend that states should be directed to ensure prompt and wide dissemination of the directions of the Court.



# Special Report of the Commissioners (Supplement to the Fourth Report)

(A follow-up to the Fourth Report submitted in August 2003, with  
advice for immediate orders.)

The four reports submitted earlier aimed at evaluating the implementation of food and employment related schemes and of the Honourable Court's orders. We wish to reiterate our earlier concern that the right to food cannot become a reality till due recognition is given to the crucial link between it and the right to work as well as the right to information.

This special report follows a series of meetings held with government, as directed by the Hon'ble Court. Many agreements have been reached, such as the discontinuation of grain exports and a ban on the use of labour-displacing machines on public works. **However, some of the orders of the Honourable Court have not been complied with.** The most flagrant cases of non-compliance are discussed below.

## **1     Mid-day Meal Scheme**

- 1.1     There is much evidence of the benefits provided by cooked meals both in terms of higher enrolment rates and better nutritional status of children (including that of the girl child). It was in this view that the Honourable Court ordered all the states to provide cooked meals in all government and government aided primary schools.
- 1.2     However recent reports show that the midday meal scheme has not been started at all in the states of Bihar, Uttar Pradesh and Uttaranchal. Some states like Jharakhand and Orissa have interpreted an earlier order of the Court<sup>3</sup> directing them to start the scheme in at least one fourth of the districts, to justify the non-implementation in the entire state. Still other states like West

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<sup>3</sup> Order dated 8 May 2003, whereby the bench directed Jharakhand and others to implement the scheme in at-least one fourth of the districts.



Bengal have implemented the scheme in a few blocks and within these, only in a few schools. Further communication reveals that little effort is being taken to ensure that the coverage is universalised to cover all eligible schools.

- 1.3 We have also been informed that in Mizoram, parents are being asked to contribute towards the costs of mid-day meals. Government orders to this effect appear to have been issued, asking teachers to extract payments or donations from parents to meet the costs of fuel and utensils.

**In this light we advise the Honourable Court to:**

- A. Direct the states that are yet to initiate cooked mid-day meals in primary schools as well as those that have implemented it partially to comply with the order of November 28, 2001.
- B. Issue clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage of all government and government-assisted primary schools with midday meal scheme immediately.
- C. Direct that the conversion costs needed to provide a hot nutritious meal are not recovered in any form or percentage from the parents of the children enrolled in these schools.

## **2 Antyodaya Anna Yojana**

- 2.1 In the last few months an attempt was made to ascertain the degree to which the interim order directing the Government of India to issue additional Antyodaya cards to identified priority groups has been complied with.
- 2.2 We find however that the guidelines issued by the Governments in this regard are flawed in two respects. This in turn fails to make these priority groups particularly the primitive tribal groups (PTG's) eligible as a 'matter of right', as recommended by the petitioner and directed by the Court.<sup>4</sup> First, they explicitly require

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<sup>4</sup> In the order of 8 May, 2003.



BPL status as a pre requisite for eligibility to receive benefits under the expanded programme thereby ensuring that Antyodaya cards are only issued from among existing BPL cardholders. In order to ensure that the poorest are issued cards it is important that individuals from the priority groups be given Antyodaya cards even if they have been inadvertently or wrongfully excluded from the BPL lists.<sup>5</sup> Orders to this effect have already been issued in West Bengal.

- 2.3 Second, the governments of many states have interpreted the order incorrectly to mean that the number of Antyodaya cards issued in each district should simply be increase from 15% of the existing BPL cards to 23%. Such an automatic increase does not allow for differing numbers between districts of the priority groups mentioned in the order. The result is that in areas of intense poverty, where the need for cards is greater, only a small proportion of the vulnerable households are covered. This problem was found, for instance, in villages of Dahi block in Madhya Pradesh and Lakhanpur block in Chattisgarh. Persons representing the commissioners came across many destitute households belonging to the PTG's of Bharia and Hill Korwa respectively who had not been issued Antyodya cards.
- 2.4 Thirdly, in all states other than MP, Chattisgarh, Rajasthan, Sikkim and Nagaland the process of identification is yet to be completed.

**In the light of the above, we advise the Honourable Court to:**

- A. Direct the Government of India and State Governments to issue revised guidelines ensuring that the possession of a BPL card is not a necessary eligibility criterion for inclusion in the expanded Antyodaya programme.
- B. Direct the States to ensure that the inclusion of priority groups is done as a matter of right, as per the orders of the Court.

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<sup>5</sup> This was also agreed upon in a recent meeting convened by the Department of Food and Public Distribution. This meeting, held in New Delhi on 19 September 2003, was called to discuss the recommendations made by the Commissioners in their fourth report.



- C. Direct that the cards must be issued within four weeks to all primitive tribes and within eight weeks for other priority groups, for those states that are yet to complete the process of identification and distribution of cards.
- D. Direct the Government of India to ensure that grain allocations under Antyodaya Anna Yojana are raised as may be required for the implementation of these directions.

### **3 Annapurna and NSAP**

- 3.1 The Annapurna scheme, from being a centrally sponsored one was transferred to the State Plan wef 2002-2003. Since then a number of States including MP, Karnataka, Haryana, Punjab, Arunachal Pradesh, Assam, Chattisgarh, Gujarat, Kerala, Manipur, Nagaland, UP and Uttaranchal<sup>6</sup> have discontinued the scheme, in many cases without providing any alternative. In both the districts of Sheopur and Dhar in MP, our investigators met many elderly persons who were dependent on the Annapurna benefits for their survival but had been abruptly deprived of it since March 2003. Moreover this had been done without providing for any other alternative arrangement. This had been brought to the attention of the state government in July 2003 but field visits made in November showed that no heed had been paid to the Commissioners recommendation that these benefits not be withdrawn.

**In the light of the above we advise the Honourable Court to:**

- A. Direct that no scheme covered by the orders of the court (including the National Old Age Pension Scheme and the National Family Benefit Scheme and in particular Annapurna) be discontinued or restricted in any way without the prior approval of the court. If any of the schemes have already been discontinued, the States should reintroduce them with retrospective effect.
- B. Direct states, which contend that allocations under Annapurna are not required, since the entire eligible population has been covered

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<sup>6</sup> Grains are allotted by the Department of Food and Public Distribution on receipt of demand from the states. The mentioned states have not been allotted grain under the programme for the year 2002-2003 as per the information received from FCI as on 26.6.2003.



under the national and state pension schemes, to establish before the Court that this indeed reflects the situation at the ground level. Adequate proof must be furnished and submitted to the court that no one in the state wishes to get benefits under this scheme.

- C. Direct the GoI to make full allocation for NSAP in its budget. At present against a requirement of more than Rs 1400 crores, only Rs 680 crores is being provided, resulting in huge backlog of non-payment in the states.

#### **4 Moving towards an Employment Guarantee**

- 4.1 We have mentioned earlier the inextricable link between the right to work and the right to food. The Government of India has in the past also recognised this by conceiving of and announcing the implementation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) in the budget of 2002 – 03 (Budget speech of the Finance Minister, February 2002) more than a year and a half ago. In particular the programme clearly lays down that any individual in the selected districts, should be able to get employment at the legal minimum wage within one fortnight of registration, and should be eligible for compensation if employment is not thus provided. However nothing has been done since the budget announcement.

**We therefore advise the Honourable Court to:**

- A. Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward districts forthwith and in any case not later than one month from the date of the order.

#### **5 Integrated Child Development Services (ICDS)<sup>7</sup>**

- 5.1 It may be recalled that in an order dated 28 November 2001, the Hon'ble Court had directed all states to ensure that there is an

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<sup>7</sup> The content in this section is largely drawn from a meeting convened by the Department of Women and Child Welfare, held at New Delhi on 25 November 2003. The meeting was called to discuss the recommendations made by the Commissioners regarding the ICDS programme as well as analyze to what extent the Hon'ble Courts orders have been complied with.



Anganwadi centre in “every settlement”. The intention of the order was to provide universal access to ICDS. However, the Department of Women and Child Welfare has admitted in a recent meeting, that orders aimed at compliance with this directive have not been issued. Further, the Department maintains that due to financial constraints it is unable to cover “*each* child, pregnant & nursing mother and adolescent girl” under the scheme as directed by the Supreme Court<sup>8</sup>. Requests made by the Department for enhanced financial allocations have been turned down.

- 5.2 The response of the Department indicates that the Supreme Court Orders have been interpreted within the existing guidelines, rather than as directions that go beyond the same. This is the rationale used for not universalising the scheme either in terms of reaching every “settlement” or in terms of covering “each” beneficiary (child within the age group of 0-6, pregnant and nursing mother, adolescent girls).
- 5.3 The net result is that only 3.4 crore children are getting the benefit of supplementary nutrition under ICDS. This is nowhere near the number of children in the relevant age group (over 15 crores), or the numbers that are malnourished (8.5 crore), or even the numbers belonging to families below the poverty line (6 crores). The percentage of adolescent girls being covered is much less as the scheme for them has not been operationalised for all Anganwadi centres. The coverage of settlements is also not complete. At present for around 14 lakh habitations, there are only 6.05 lakh reporting Anganwadi centres. Thus the present coverage of the scheme is clearly insufficient to meet the needs of all those who require it.

**We may add that 3.4 crore is the theoretical entitlement, actual coverage is much less, as the states do not provide sufficient funds to meet the cost of nutrition.**

**In the light of the above we advise the Honourable Court to:**

- A. Issue clarificatory orders that the term “settlement” as used in the Order dated 28 November 2003 pertains to a cluster of households

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<sup>8</sup> Dated 28<sup>th</sup> November 2001.



within a village. The order must not be interpreted by the Department, as only operationalizing the present number of sanctioned ICDS projects.

- B. Issue orders that the ICDS services be extended to every child, pregnant and lactating mother and adolescent girl, as directed in the order dated 28 November 2003. The services must not be restricted to disadvantaged families or to a predetermined number identified and given to the states.

## **6 The Right to Information**

- 6.1 Documents pertaining to food and employment related schemes are still being routinely denied to the public, and even to the Commissioners investigation teams. Despite the necessary authority, open access to information and records dealing with these schemes is still not readily attainable. The non-accessibility can be on account of continued absence of the concerned authority and thereby his non-availability to those who require his services, blanket refusal to provide the information as well as the phenomenon of prohibitive pricing. A case in point is the price charged for photocopying muster rolls in Madhya Pradesh, which at a steep Rs 20 per page is ten times more than that charged for photocopying one page of most other documents. Two letters addressed to the Chief Secretary of the state by the Commissioners have not even received a response let alone any action. A recent trip to Dhar district of MP several months after the letters were sent has confirmed that no order revising the price has been issued, as was requested by the commissioners.
- 6.2 Letters have also been sent to all the state governments requesting that documents related to the PDS including the list of beneficiaries and the stock register be made public. Though several state governments have issued standard orders in this regard, actual implementation of these orders at the ground level is not carried out. In November 2003 the Commissioners representatives visited the district of Dhar in MP. Despite having the required authority and thereby being promised the relevant information none was forthcoming. It appears that there is little accountability on not providing the information. Measures must



therefore be taken to ensure that information and documents are available at a cost effective and time bound manner.

**In light of the above, we advise the Honourable Court to:**

- A. Direct that all documents pertaining to food and employment schemes, including those mentioned in the interim order of 28 November 2001, should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time. In cases where an application is made for a copy of these documents, certified photocopies should be provided within one week of the application. The charge for the photocopies should be no greater than the cost of photocopying and in any case no higher than Rs. one per page.
- B. Direct the States and the Government of India to submit an affidavit clarifying the procedure required to apply for these documents, and the available redressal mechanisms when records are not provided on time. This should explicitly include measures to be undertaken on account of refusal to accept complaints and letters of application in addition to required action that must be taken against any official found to be guilty of repeated inaction.
- C. Direct the GoI to bring into force the Right to Information Act passed by Parliament and to issue rules and procedure pertaining to the Act.















